UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

KENNETH MAURICE GRANT Petitioner, v. QUENTIN BYRNE, *et al.*, Respondents.	Case No. 3:16-cv-00104-MMD-CLB ORDER

I. SUMMARY

Before the Court for a decision on the merits is a petition for a writ of habeas corpus filed by Kenneth Maurice Grant, who is incarcerated in the custody of the Nevada Department of Corrections ("NDOC"). (ECF No. 62.) For reasons that follow, the petition will be denied.

II. BACKGROUND

Grant stands convicted of first-degree murder with use of a deadly weapon and robbery with use of a deadly weapon. The Nevada Supreme Court briefly summarized the facts of his case as follows:

> The body of David Sygnarski was found on April 26, 2001, in a hotel room previously rented by Paulette Perry and Kenneth Grant. Hotel surveillance tapes show Sygnarski entering the room with Perry and Grant, Perry and Grant leaving and returning with cleaning supplies, and Perry and Grant leaving for good, but do not show Sygnarski leaving. Sygnarski's body was later found in the hotel room.

(ECF No. 25-11 at 2.) After a jury found him guilty, Grant was sentenced to life with the possibility of parole after 40 years. (ECF No. 25-3.) Grant's judgment of conviction was entered in the Eighth Judicial District Court for Clark County, Nevada, in December 2003 (ECF No. 25-6). The jury found Grant not guilty of conspiracy to commit robbery. (ECF No. 24-3 at 3.) In a separate trial held prior to Grant's, a jury found Perry guilty of first-

degree murder with use of a deadly weapon, conspiracy to commit robbery, and robbery with use of a deadly weapon. (ECF No. 90-20 at 5-6.)

Grant appealed his judgment of conviction. (ECF No. 25-7.) In December 2005, the Nevada Supreme Court entered an order affirming the judgment. (ECF No. 25-11.) Grant then filed a *pro se* petition for writ of habeas corpus in the state district court. (ECF No. 25-14.) With the assistance of court-appointed counsel, he filed an amended state petition that consisted entirely of claims that he was denied his Sixth Amendment right to effective assistance of counsel. (ECF No. 26-5.) The state district court denied the amended petition. (ECF No. 28-3.)

Grant appealed. (ECF No. 28-4.) The Nevada Supreme Court affirmed the district court's order denying post-conviction relief. (ECF No. 28-8.) Grant initiated this federal habeas proceeding by filing a *pro se* petition on February 23, 2016. (ECF No. 6.)

After Respondents moved to dismiss (ECF No. 19), Grant filed a renewed motion for appointment of counsel. (ECF No. 29.) The Court granted the motion and denied Respondents' motion to dismiss without prejudice. (ECF No. 35.)

On August 24, 2018, with the assistance of counsel, Grant filed his first amended petition. (ECF No. 44.) After Respondents again moved to dismiss (ECF No. 48), he sought leave to file a second amended petition, which Respondents did not oppose. (ECF Nos. 55, 56.)

On October 11, 2019, Grant filed a second amended petition (ECF No. 62), in response to which the Respondents again filed a motion to dismiss (ECF No. 64). The Court granted the motion in part by dismissing Ground One(D) of the petition and directed the Respondents to file an answer to the remaining claims. (ECF No. 73.)

Respondents filed their answer on October 12, 2020. (ECF No. 78.) Instead of filing a reply to the answer, Grant filed a motion for leave to file a third amended complaint to add an additional ineffective assistance of trial counsel claim. (ECF No. 82.) The Court denied that motion and directed Grant to file his reply. (ECF No. 87.) He filed his reply on July 12, 2021. (ECF No. 91.)

III. LEGAL STANDARD

This action is governed by the Antiterrorism and Effective Death Penalty Act ("AEDPA"). 28 U.S.C. § 2254(d) sets forth the standard of review under AEDPA:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> >
> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

A decision of a state court is "contrary to" clearly established federal law if the state court arrives at a conclusion opposite that reached by the Supreme Court on a question of law (that is, applies a rule that contradicts governing Supreme Court precedent) or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000). An "unreasonable application" occurs when "a state-court decision unreasonably applies the law of [the Supreme Court] to the facts of a prisoner's case." *Id*. at 409. "[A] federal habeas court may not "issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly." *Id*. at 411.

The Supreme Court has explained that "[a] federal court's collateral review of a state-court decision must be consistent with the respect due state courts in our federal system." *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003). The "AEDPA thus imposes a 'highly deferential standard for evaluating state-court rulings,' and 'demands that state-court decisions be given the benefit of the doubt.'" *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quoting *Lindh v. Murphy*, 521 U.S. 320, 333 n. 7 (1997); *Woodford v. Viscotti*, 537 U.S. 19, 24 (2002) (per curiam)). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the

correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (citing *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). The Supreme Court has emphasized "that even a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Id*. (citing *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003)); *see also Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (describing the AEDPA standard as "a difficult to meet and highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt") (internal quotation marks and citations omitted).

"[A] federal court may not second-guess a state court's fact-finding process unless, after review of the state-court record, it determines that the state court was not merely wrong, but actually unreasonable." *Taylor v. Maddox*, 366 F.3d 992, 999 (9th Cir. 2004), *overruled on other grounds by Murray v. Schriro*, 745 F.3d 984, 999-1000 (9th Cir. 2014).; *see also Miller-El*, 537 U.S. at 340 ("[A] decision adjudicated on the merits in a state court and based on a factual determination will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state-court proceeding, § 2254(d)(2).").

Because de novo review is more favorable to the petitioner, federal courts can deny writs of habeas corpus under § 2254 by engaging in de novo review rather than applying the deferential AEDPA standard. *Berghuis v. Thompkins*, 560 U.S. 370, 390 (2010).

IV. DISCUSSION

Grant alleges in Ground One of his second amended petition that he was deprived of his right to the effective assistance of counsel. In Ground Two, he alleges a deprivation of his rights to due process and a fair trial as a result of prosecutorial misconduct. The Court will address each ground in turn.

A. Ground One

With Ground One(D) dismissed as procedurally defaulted, three sub-claims of ineffective assistance of counsel (IAC) remain before the Court for adjudication. To

demonstrate ineffective assistance of counsel in violation of the Sixth and Fourteenth Amendments, a convicted defendant must show 1) that counsel's representation fell below an objective standard of reasonableness under prevailing professional norms in light of all the circumstances of the particular case; and 2) that it is reasonably probable that, but for counsel's errors, the result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668, 687-94 (1984).

1. Ground One(A)

In Ground One(A), Grant alleges counsel's performance fell below constitutional standards because counsel failed to investigate and present expert testimony to establish facts crucial to the defense theory of the case. The State's primary theory at trial was that Grant and Perry devised a robbery scheme in order to obtain drug money. The plan was for Perry to lure a victim to their hotel room by presenting herself as prostitute while Grant waited in the room to assist in the robbery. The defense theory was that Sygnarski came to the room to smoke crack cocaine with Perry and Grant and that Perry killed Sygnarski to defend herself from an assault after Grant had left to buy more drugs. The defense supported this theory by pointing to evidence that the door was deadbolted when Grant attempted to return to the room.

Grant contends that counsel should have presented testimony from a toxicologist refuting testimony by the State's medical examiner, Dr. Sheldon Green. Dr. Green testified that Sygnarski had a small amount of cocaine in his blood stream when he died but the ratio of cocaine to cocaine-metabolite indicated that it had been in his system for several hours. (ECF No. 23-2 at 25-28.) The State relied on this testimony to refute the defense's claim that Sygnarski had come up to the room to smoke crack with Perry and Grant. (ECF No. 23-3 at 17-18.) In state post-conviction proceedings, Grant presented expert reports that called into question Dr. Green's conclusions and showed that it was possible Sygnarski ingested cocaine within an hour of his death. (ECF No. 27-2 at 87-93; ECF No. 27-4.)

Grant also contends that testimony from a pathologist could have supported his claim that Perry killed Sygnarski by herself. Dr. Green testified at trial that the blunt force trauma Sygnarski suffered was more consistent with the use of fists rather than the receiver of a telephone as the defense suggested.[1] (ECF No. 23-2 at 45-47.) This testimony undermined the defense theory because Perry weighed only a 100 pounds while Sygnarski weighed close to 200 (ECF No. 62 at 14-15), making it unlikely that she alone would have been able inflict both the blunt force trauma and stab wounds that caused his death without at least using an object to knock him into submission. Dr. Green also dismissed the defense's suggestion that abrasions on Sygnarski's knees were consistent with him straddling over someone on the floor. (ECF No. 23-2 at 53.) In state post-conviction proceedings, Grant presented a declaration from a forensic pathologist, Dr. Terri Haddix, indicating that injuries to Sygnarski's face could have been produced by being hit with a telephone and that abrasions on Sygnarski's knees could have resulted from him straddling a struggling person. (ECF No. 27-4 at 5-6.)

In deciding Grant's post-conviction appeal, the Nevada Supreme Court correctly cited *Strickland* as the federal law standard for adjudicating ineffective assistance of counsel claims. (ECF No. 28-8 at 2.) With respect to the claim that is presented to this Court as Ground One(A), the court stated as follows:

> First, Grant contends that the district court erred by denying his claims that counsel was ineffective for failing to investigate and present testimony from a toxicologist. We disagree. Taken as true, such testimony would only have supported Grant's claim that he and his girlfriend were drug users and the victim came up to their hotel room to use drugs, not for sexual activity. Because Grant fails to demonstrate that such testimony would have led to a different result at trial,[1] we conclude that the district court did not err by denying this claim without conducting an evidentiary hearing.
>
> Second, Grant contends that the district court erred by denying his claim that counsel was ineffective for failing to investigate and present testimony from a pathologist. However, the record reflects that counsel sought the services of a pathologist, and while Grant has not provided complete trial transcripts, we must infer from the record that has been provide that counsel

[1]Testimony at Grant's trial established that the telephone in the hotel room had been pulled from the wall and had blood on it. (ECF No. 21-12 at 35; ECF No. 22-3 at 59.) Perry testified at her trial that she hit Sygnarski in the head with the receiver of the telephone to repel his sexual advances. (ECF No. 90-17 at 176.)

> made a strategic decision not to have the pathologist testify. *See Cullen v. Pinholster*, 563 U.S. 170 (2011) ("*Strickland* specifically commands that a court must indulge the strong presumption that counsel made all significant decisions in the exercise of reasonable professional judgment." (internal quotation marks and alterations omitted)); *State v. Powell*, 122 Nev. 751, 759, 138 P.3d 453, 458 (2006) ("Judicial review of an attorney's representation is highly deferential and a claimant must overcome the presumption that a challenged action might be considered sound strategy.") Moreover, given the state of the evidence, Grant fails to demonstrate that the result of the proceedings would have been different had a pathologist testified. Therefore, we conclude that the district court did not err by denying this claim without conducting an evidentiary hearing.
>
> _____
>
> [1]Grant was acquitted of conspiracy to commit robbery.

(*Id*. at 3-4.)

Grant argues that the Nevada Supreme Court's denial of the claim is not entitled to deference under § 2254(d) because the court misapplied the *Strickland* prejudice standard by requiring him to show that, but for counsel's errors, the outcome of the proceeding would have been different. He points out that the correct threshold is only a *reasonable probability* that the outcome would have been different. Even so, the claim fails under de novo review.

At trial, the State presented security videos and a report generated by the hotel room's electronic door lock to show when individuals entered and exited Grant and Perry's room. (ECF No. 21-13 at 5-10, 14-25; ECF No. 22-3 at 99-136.) That evidence showed that Grant and Perry checked into the hotel at about 1:00 a.m. on April 24, 2001. (*Id*.) After leaving and returning numerous times in the early morning hours, Perry left the room at approximately 6:30 a.m. and returned about five hours later (at 11:21 a.m.) with Sygnarski. (*Id*.) While Perry was gone, Grant also exited and entered numerous times but was in the room when Perry returned with Sygnarski. (*Id*.) Grant emerged about an hour later, but Sygnarski never appeared again. (*Id*.) Later that evening, Grant and Perry left the room together and returned with what appeared to be cleaning supplies. (*Id*.)

Even if Grant was able to establish through a toxicologist that Sygnarski had ingested cocaine closer to his time of death, it would not have improved Grant's chances for a better outcome at trial. By acquitting Grant on the conspiracy charge, the jury

apparently rejected the State's theory about a prearranged robbery. The verdict on the first-degree murder and robbery counts did not depend on whether Perry was out looking for drugs rather than trying to lure a victim back to the room by posing as a prostitute or whether Sygnarski came to the room to smoke crack rather than for sexual activity. Thus, additional toxicology evidence would not have impacted the jury's decision to find Grant guilty of those charges.

Similarly, Grant has not shown a reasonable probability of a better outcome had counsel presented testimony from a pathologist. As the Nevada Supreme Court noted, counsel retained the services of a pathologist, Dr. Todd Grey. Asked by counsel whether medical evidence supported "the conclusion the victim was killed solely by Ms. Perry," Dr. Grey sent a letter to counsel several months before trial indicating that it did not. (ECF No. 26-2 at 63-64.) At trial, counsel obtained permission from the trial court for Dr. Grey to be present while Dr. Green testified (ECF No. 23-2 at 4.) but chose not to call him as a witness.

Grant argues that it was ineffective assistance for counsel to not call Dr. Grey as a witness because Dr. Grey could have "undermined Dr. Green's version of events." (ECF No. 91 at 17.) He fails to demonstrate, however, what helpful testimony Dr. Grey would have been able to provide. For example, he claims Dr. Grey "could have testified that [the victim's] knee abrasions were consistent with straddling someone on the floor" but does not provide any evidence showing Dr. Grey held such an opinion. (*Id*.)

Grant also relies on the opinion of Dr. Haddix to support his IAC claim, but her declaration is not particularly compelling. As noted, Dr. Haddix disagreed with Dr. Green's testimony on whether the injuries to Sygnarski's face could have been produced by being hit with a telephone and whether the abrasions on Sygnarski's knees could have resulted from him straddling a struggling person. (ECF No. 27-4 at 5-6.) However, her opinions on these points are stated only as possibilities not conclusions. (*Id*.) Similarly, she noted that it was "theoretically possible" that Sygnarski may have been "stunned or had a brief loss of consciousness" that facilitated the infliction of the fatal stab wounds. (*Id*.) Dr. Grey

noted in his letter, however, that it was "unlikely" that the injuries to Sygnarski's head would have "produced unconsciousness or incapacitation." (EFC No. 26-2 at 63.) Having obtained that opinion, counsel was not obligated to seek a more favorable opinion from another expert. *See Payton v. Cullen*, 658 F.3d 890, 896 (9th Cir. 2011). [2]

Finally, other evidence presented at trial rendered implausible the theory that Perry alone killed Sygnarski. According to the theory, the dispute between the two and the physical altercation that resulted in Sygnarski's death occurred between the time Grant left to buy more drugs and when he returned to a deadbolted door. (ECF No. 91 at 12-13.) That time interval was only 17 minutes. (*Id*.) Videotape footage of Perry after the supposed fight to the death with a person nearly twice her size showed that she did not appear to have suffered any injuries. (ECF No. 23-4 at 16.) The video evidence also showed that Grant wore the same clothing for his numerous trips out of the room on the morning of the killing but when he emerged for the first time after Perry and Sygnarski entered, he had on different clothes. (ECF No. 23-3 at 18-19.) As the State pointed out, the likely explanation is that he got blood on the clothes he was wearing earlier. (*Id*.)

In summary, Grant has not shown that trial counsel was ineffective in failing to investigate and present expert testimony to establish facts crucial to the defense theory of the case. Ground One(A) is denied.

2. Ground One(B)

In Ground One(B), Grant alleges counsel provided ineffective assistance of counsel by failing to present evidence of Perry's propensity for violence. According to Grant, counsel should have presented evidence showing that in 1998 Perry had resisted arrest in Dallas, Texas, by attempting to kick and bite arresting officers. Grant further alleges that counsel could have introduced the results of mental health testing that showed Perry was prone to aggressive behavior.

[2]Grant refers in his pleadings to counsel failing to have an expert establish Sygnarski's time of death (ECF No. 62 at 11; ECF No. 91 at 12-13) but has presented no evidence showing that an expert would have been able to make such a determination in a manner that would have benefitted his defense.

The Nevada Supreme Court adjudicated this claim in Grant's state post-conviction proceedings and decided as follows:

> Grant contends that the district court erred by denying his claim that counsel was ineffective for failing to investigate and present evidence of his girlfriend's prior violent actions and statements. Grant fails to demonstrate that this evidence would have been admissible at trial. Moreover, he fails to demonstrate that the result of trial would have been different had counsel presented this evidence. Therefore, we conclude the district court did not err by denying this claim without an evidentiary hearing.

(ECF No. 28-8 at 4.) While Grant argues that this decision is also not worthy of deference under § 2254(d), the claim fails under this Court's de novo review.

At trial, Grant's counsel effectively elicited testimony from prosecution witnesses about Perry's aggressive behavior and highlighted Perry's violent acts in her closing argument. The State presented the testimony of Harvey Baughmen, a former friend of Perry and Grant, who recounted an incident wherein Perry and Grant waived him over while driving and, after a short conversation, attacked him and took money from him. (ECF No. 21-12 at 5-14.) On cross-examination, counsel had Baughmen recount Perry's involvement in the attack. (ECF No. 21-12 at 19.) She also got him to testify that Perry was "a little tiger," that she was "not to be trifled with," and that he had seen her slice up a waterbed with a knife. (*Id*.)

Another acquaintance of Perry's confirmed on cross-examination that Perry would have been able to singlehandedly take down Baughmen, "a rather large man," and that Perry had once confronted the acquaintance's friend in a threatening manner with a knife. (ECF No. 23-1 at 103-06.) Counsel's closing argument emphasized Baughmen's testimony about the size difference between Perry and himself and about how she was nonetheless able to pull him down from behind by grabbing his hair. (ECF No. 23-4 at 5.)

Counsel's failure to also present evidence about the incident in Texas and the mental health test results did not deprive Grant of effective assistance of counsel. As the Nevada Supreme Court noted, it is not clear the evidence would have been admissible. *See* NRS § 48.045(2) (prohibiting the admission of other crimes, wrongs, or acts "to prove the character of a person in order to show that he acted in conformity therewith");

Mortensen v. State, 986 P.2d 1105, 1110 (Nev. 1999) (holding NRS § 48.045(2) applies to witnesses). And, even if admitted, the evidence Grant cites would have had only marginal probative value beyond the evidence already before the jury and would not have exculpated Grant.

Thus, Grant has not shown that counsel's performance fell below an objective standard of reasonableness or that he was prejudiced by counsel's alleged omission. Ground One(B) is denied

3. Ground One(C)

In Ground One(C), Grant alleges counsel's assistance was ineffective by failing to present lay or expert testimony about the customs and habits of prostitutes. He claims that such an expert or lay witness would have been able to testify about various aspects of prostitution that would have assisted the defense in showing that Perry was not presenting herself as a prostitute to lure Sygnarski back to the hotel room as the prosecution claimed. According to Grant, an ex-prostitute would have informed the jury about what prostitutes typically wear, how they confirm a customer has money, and the fact that the customer normally controls where the sex acts occur.

The Nevada Supreme Court rejected this claim in Grant's state post-conviction proceedings, stating as follows:

> Grant contends that the district court erred by denying his claim that counsel was ineffective for failing to investigate and present testimony from an ex-prostitute. While Grant mentions topics that an ex-prostitute counsel have discussed, he fails to describe with specificity what she would have said and how such testimony would have changed the result at trial. Therefore, Grant fails to demonstrate that the district court erred by denying this claim without conducting an evidentiary hearing. *See Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

(ECF No. 28-8 at 4.) Once again, the claim fails irrespective of § 2254(d)'s deference requirement.

As discussed above in relation to Ground One(A), the jury found Grant not guilty of conspiracy to commit robbery, which shows that it was not convinced Grant and Perry devised a scheme to rob someone by having Perry pose as a prostitute. Consequently,

the outcome of Grant's case did not depend on the defense demonstrating that Perry's conduct and appearance were not consistent with the customs and habits of prostitutes. In addition, Grant has not made any showing as to the actual witness he could have called or the specific testimony he or she would have provided. *See Wildman v. Johnson*, 261 F.3d 832, 839 (9th Cir. 2001) (mere speculation that an expert would have testified on petitioner's behalf was insufficient to establish *Strickland* prejudice); *Grisby v. Blodgett*, 130 F .3d 365, 373 (9th Cir.1997) ("Speculation about what an expert could have said is not enough to establish prejudice [under *Strickland*]").

Because Grant falls well short of meeting either prong of the *Strickland* standard, Ground One(D) is denied.

B. Ground Two

In Ground Two, Grant alleges that the district attorney's use of inconsistent theories for the same offenses and course of conduct in his trial and the trial of codefendant Perry violated his constitutional right to due process and a fair trial. Grant claims the prosecutor's closing argument suggesting that he was the one "calling the shots" conflicted with argument at Perry's trial that she was the one in control. (ECF No. 62 at 20.)

When Grant presented this claim in his direct appeal, the Nevada Supreme Court summarily rejected it in a footnote. (ECF No. 25-11 at 2-3 n.1.) Even so, the decision is still deemed an adjudication on the merits for the purposes of § 2254(d). *See Harrington*, 562 U.S. at 100. Accordingly, this Court "must determine what arguments or theories supported or, as here, could have supported, the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of [the Supreme Court]." *Id*. at 102.

On habeas review, the question is whether the prosecutor's actions "so injected the trial with unfairness as to make the resulting conviction a denial of due process." *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). This Court agrees that due process

concerns would be present if the State's theories in each case negated each other. For example, Respondents cite to a Ninth Circuit case in which the prosecutor presented two mutually exclusive theories in two different trials. (ECF No. 78 at 20-21 (discussing *Thompson v. Calderon*, 120 F.3d 1045 (9th Cir. 1997)).) The prosecutor in the first trial asserted that the defendant, Leitch, plotted to kill his former girlfriend and that Leitch and another individual, Thompson, committed the actual killing together. *See Thompson*, 120 F.3d at 1059. In Thomspon's trial, the prosecutor claimed that Thompson acted alone and killed the victim for a reason wholly unrelated to the motive proposed at Leitch's trial. *See id*.

Nothing remotely similar occurred here. As in Grant's trial, the prosecutor in Perry's trial advanced the theory that Perry lured Sygnarski up to the hotel room with the intention of robbing him with Grant's assistance and that Sygnarski was killed when he attempted to resist. (ECF No. 90-19 at 48-49.) In both cases, the prosecutor claimed Perry and Grant were equally culpable of the same crimes based on the same general set of facts. The argument upon which Ground Two is premised occurred in the State's rebuttal closing argument and was merely a response to Grant's contention that he was only guilty of being an accessory after the fact. (ECF No. 23-4 at 21.)

Because the State's theory supporting the crimes for which Grant was convicted was not inconsistent with theory it presented in Perry's trial, the State did not violate Grant's right to due process. Ground Two is denied.

For the reasons set forth above, Grant's petition for habeas relief will be denied.

C. Certificate of Appealability

This is a final order adverse to a habeas petitioner. As such, Rule 11 of the Rules Governing Section 2254 Cases requires this Court to issue or deny a certificate of appealability (COA). Accordingly, the Court has *sua sponte* evaluated the claims within the petition for suitability for the issuance of a COA. *See* 28 U.S.C. § 2253(c); *Turner v. Calderon*, 281 F.3d 851, 864-65 (9th Cir. 2002).

///

Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue only when the petitioner "has made a substantial showing of the denial of a constitutional right." With respect to claims rejected on the merits, a petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). For procedural rulings, a COA will issue only if reasonable jurists could debate (1) whether the petition states a valid claim of the denial of a constitutional right and (2) whether the court's procedural ruling was correct. *See id*.

Having reviewed its determinations and rulings in adjudicating Grant's petition, the Court declines to issue a certificate of appealability for its resolution of any procedural issues or any of Grant's habeas claims.

V. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the motions before the Court.

It is therefore ordered that Grant's second amended petition for writ of habeas corpus (ECF No. 62) is denied.

It is further ordered that Grant's motions for extension of time (ECF Nos. 88, 89) are granted *nunc pro tunc* as of their respective filing dates.

It is further ordered that a certificate of appealability is denied.

The Clerk of Court is directed to enter judgment accordingly and close this case.

DATED THIS 12th Day of August 2021.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE